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Consideration of the additional international legal instrument against illicit manufacturing of and trafficking in firearms, their parts and components and ammunition

Proposals and contributions received from Governments

Addendum

Page

II. Proposals and contributions received from Governments 1
Belgium 1
Brazil and Norway 2

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Belgium

[Original: French]

Article 4: Scope

1. The following new paragraph should be added:

"(...) The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law shall not be governed by this Protocol."

* A/AC.254/18.

2. This wording is based on article 19, paragraph 2, of the International Convention for the Suppression of Terrorist Bombings (General Assembly resolution 52/164, annex).

Brazil and Norway

[Original: English]

Report on the technical session on firearms regulation, held in Bergen, Norway, from 6 to 8 September 1999

I. Introduction

1. At the initiative of the Ministry of Justice of Norway and the Ministry of Justice of Brazil, an open-ended technical session on firearms regulation was organized in Bergen, Norway, from 6 to 8 September 1999. The representatives of Brazil and Norway alternated as chairmen of the session. The purpose of the session was to exchange information and views on an informal basis on technical matters and to enhance the understanding of the technical questions involved in the revised draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition and Other Related Materials, Supplementary to the United Nations Convention against Transnational Organized Crime. The session was organized as a response to the many calls for such a meeting during the sessions of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime. The organizers took note of Economic and Social Council resolution 1999/20 of 28 July 1999, adopted on the recommendation of the Commission on Crime Prevention and Criminal Justice at its eighth session. In that resolution, the Council had recommended to the General Assembly the adoption of a draft resolution in which the Assembly would encourage Member States to convene informal regional or interregional meetings to assist the work of the Ad Hoc Committee. Article 9 of the draft Protocol (A/AC.254/4/Add.2/Rev.1) was used as a basis for the discussion on the marking of firearms. Article 11 of the draft Protocol was used as a basis for the discussion on export/import/transit authorization and licensing. The organizers were pleased with the response to the invitation to participate in the session: there were 60 participants from 26 countries, covering all the regions in the world. The organizers underlined the fact that the aim of the session was not to negotiate the language in the draft Protocol, the Ad Hoc Committee being the only forum authorized to do that. The convening of the session was motivated by a desire to bring to fruition the work on the draft Protocol through a process involving dialogue and mutual understanding. The session was open to all Member States of the United Nations.

II. Marking

2. Papers on marking were presented by the representatives of Australia, Brazil, Canada, China, Japan, South Africa, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America and by the representative of the International Criminal Police Organization (Interpol).

3. After the presentations, there was a general exchange of views on the subject.

4. The discussion revealed that there was general understanding and agreement on the need for individual and appropriate marking of firearms as an essential tool for law enforcement. From a law enforcement perspective, marking was considered vital in tracing

firearms during criminal investigations. The appropriate marking of firearms gave law enforcement a starting point when investigating crimes involving firearms.

5. The participants also discussed possible acceptable information requirements for marking. There were mainly two different approaches as regards the content of markings. The representatives of a number of countries expressed support for the marking requirements contained in the draft Protocol. Furthermore, it was suggested that such standards could include, *inter alia*, the country of manufacture, the date of manufacture, the name of the producer, the serial number, the calibre or gauge and the model.

6. The other approach would be to have the minimum requirements for marking the manufacturer and the serial number. The representatives of some countries felt that it should be left to each State to individualize firearms through registers and/or unique markings of its choice. It was pointed out that it was sufficient to know the country of manufacture, as the authorities of that country could then be contacted for further information on where the weapons might have been transferred. In that case, it was pointed out, it would also be necessary to have an agreement on the methods for universal designation of country names. The focus of the discussion was whether internationally stipulated methods that could individualize firearms on a global basis were needed or whether national standards were sufficient.

7. Another important item was when and how often firearms should be marked. There was general agreement that, regardless of the content of the marking, the firearms should at least be marked at the time of manufacture. A number of participants expressed the view that markings were also necessary when firearms crossed borders. Such markings would save time in investigations, since law enforcement would not have to start at the country of manufacture when trying to trace firearms. There were different views on whether to mark at the time of export and/or at the time of import. It was argued that marking at the time of export could erase clues for tracing illicitly trafficked arms. However, marking at the time of import was underlined as an effective means of ensuring the swift tracing of firearms at the national level. It was further argued that marking at the time of import was necessary since it would confirm the actual delivery of the firearms. Another view maintained that additional marking at import was not necessary since countries could keep their own records of imported firearms based on original markings. That would then provide enough clues for tracing. It was also said that marking at the time of import and/or export was not as cost-effective as marking at the time of manufacture and could pose technical and/or logistical problems. However, it was also pointed out during the discussion that at present there was not sufficient information to determine the cost-effectiveness of marking at the time of manufacture compared with additional marking at the time of import or export.

8. There was general understanding that the discussion on technical methods of marking should include input from the firearms industry. Some of the presentations included new possibilities for marking, such as methods involving microchips, laser identification and metallurgical deformation. The presentations also included marking techniques that would render the firearms inoperable if the markings were to be obliterated. However, it was noted that the traditional form of stamp marking was a good method for marking as it was cost-effective, it was based on existing widespread technology and it was effective. New forms of marking should prove to be at least as cost-effective and effective if they were to be adopted. For law enforcement, it was essential to be able to recover obliterated markings. It was noted that the stamping method was fairly effective. It was also noted that markings should be made as unalterable as possible. It was further noted that it would be

useful to develop simple and inexpensive marking technologies that would make it more difficult to obliterate markings. Moreover, erased markings should be recoverable.

9. Other related issues that were discussed included where to mark, record-keeping and points of contact. Arguments were given in favour of having markings on several parts of the same firearm, such as the barrel, frame and/or receiver and slide. It was noted by several countries that records should be kept for as long as possible since firearms were very durable goods. The representative of Brazil, by presenting SINARM, the Brazilian national firearms registration system, provided a practical example of how record-keeping could be arranged. The importance of establishing contact points through national agencies responsible for handling requests related to the tracing of firearms from other States was stressed.

III. Export/import/transit authorization and licensing

10. Technical papers on the issue of export/import/transit authorization and licensing were presented by the representatives of Australia, Canada, China, the Netherlands, the United Kingdom and the United States.

11. It was noted that, in the national jurisdiction of each of the countries referred to in the technical papers, the export and import of firearms were already subject to regulation. It was argued that control systems already in place were a good point of departure for harmonizing routines for the transfer of firearms. There was broad understanding of the need for effective national systems of licensing or authorization for commercial firearms transfers. Representatives stressed the need to achieve internationally agreeable standards in that regard. The need for further discussion was stressed. It was emphasized that the discussion on that issue had to reflect the responsibility of the countries involved in transfers of firearms. It was a common understanding that not only the importing country, but also the exporting country had a responsibility to ensure that the movement of firearms across its borders was legal and safe. Controls at the stage of exportation could greatly assist law enforcement authorities in other countries in conducting investigations. Thus, an export licence should be issued on the basis of appropriate official documents provided by the importing country. It was noted that, in respect of tracking firearms, it was essential that a chain of evidence be established so that perpetrators of breaches of weapons control could be identified and prosecuted.

12. The presentations and the discussion on the issue also underlined the assistance that licensing and registration documentation provided for law enforcement cooperation between States, as well as for the prosecution of offenders.

13. Some representatives underlined the importance of transit licensing based on the same principles and arrangements as in the case of export and import procedures, particularly in view of the risk of the diversion of firearms when in transit to a third country. It was argued that procedures for transit would make it easier for law enforcement to control and track shipments of firearms, to assist in preventing their diversion and to be provided with improved documentation, which was vital during prosecution. However, it was noted that transit controls should not be seen as a way of diluting the responsibilities or obligations of the original exporting country, the importing country and the stated end-user.

14. The representatives of some European Union member States emphasized the competence of the European Commission on export, import and transit movements, as well as on rules and regulations for the shipment of goods within the European Union.

15. Different views were exchanged on the need for a provision on an end-user certificate. That was also the case with re-export and re-transfer licensing. Some argued in favour of such arrangements, since firearms could be diverted to destinations other than those originally stipulated. Others argued against such arrangements. It was said that, when firearms were exported to the end-user as stated on the export licence, the right to the products was transferred from the exporting country to the importing country and that such an arrangement would interfere with the sovereign rights and jurisdiction of the importing country.

16. The issue of brokering and the need for a provision in the draft Protocol on that issue were also raised. It was noted that the issue posed a number of challenges, including challenges involving the country of jurisdiction and licensing. Another issue related to the definition of legal and illegal brokering and whether to criminalize such activity and, if so, how.

17. For the purpose of information, the representative of the United Kingdom briefly presented a paper on standards for deactivation and indicated that his Government intended to make available modalities of deactivation standards at a later date. Representatives of a number of other countries described deactivation principles and standards in their own countries.

IV. Conclusions

18. It was the general opinion of the participants that the session was very fruitful as it allowed for presentations of in-depth technical studies, as well as the exchange of experiences and views. It was noted that the session in Bergen complemented the International Seminar on Illicit Manufacturing of and Trafficking in Firearms, held in Tokyo on 9 and 10 June 1999. The participants welcomed the technical session to be organized by Japan in Vienna in October 1999. The close coordination of those initiatives would ensure that the draft Protocol would be rooted in the everyday experiences of the law enforcement community.

19. The representatives of countries who had presented papers were encouraged to make available revised versions of their papers as non-papers or as conference room papers to the Ad Hoc Committee at its fifth session, to be held in October 1999, in order to further the understanding of the highly technical issues involved.